

REMARKS/ARGUMENTS

Claim 1 has been amended in an effort to define the disclosed method more clearly. Particularly as now amended, claims 1 and 2 are neither anticipated under 35 U.S.C. 102(b) by Theurer et al, submitted by applicants and cited, nor obvious therefrom under 35 U.S.C. 103.

Theurer et al disclose a ballast plow used, as is well known in the art, to smooth a track bed profile **after** the track position has been corrected and the ballast has been tamped underneath the track to maintain its corrected position. For this purpose, sensors 29 contactlessly scan the track profile ahead of ballast plow 20 and, in dependence on the scanned profile, position indicators adjust plowshares 21, 22 so that they distribute the ballast evenly. This provides a smooth track profile.

In contrast to this, applicants' method provides for calculating an amount of ballast required for **subsequently** raising the track to the desired track level **at the location** where a track bed profile has been scanned and a measurement of any deviation from the desired track level has been effectuated (see also page 4, line 20, and page 5, line 18). This assures that track locations with substantial ballast deficiencies are supplied with the required amount of ballast for subsequent high-quality tamping. If not enough ballast is available at such a location for tamping, the resultant track bed at that location will be relatively loose and will not provide the solid and permanent support for the track as

at the other track locations which have sufficient amounts of ballast.

While the method of cited U. S. patent No. 6,058,628 provides a smooth track profile of a corrected and tamped track, it does not improve the quality of the ballast bed at locations that were tamped with an insufficient amount of ballast. For this purpose, it is essential to detect the track locations showing ballast deficiencies **before** the ballast is tamped and to calculate the amount of ballast required for **subsequently** raising the track to the desired track level at these locations. A solid and lasting support for the track at the desired level can be obtained only if enough ballast is available for tamping. Tamping of such an amount of ballast underneath the ties of the leveled track provides such a high-quality track support. At track locations deviating considerably from the desired level, larger amounts of ballast will have to be supplied to obtain the high quality tamping at these locations obtained at other track locations deviating less from the desired level with smaller amounts of ballast. In this way, a uniform high quality track support will be achieved.

Comparing the claimed method with the prior art, Theurer et al scan the track bed profile but they do **not** measure any deviation from a desired track **level**, this level having been established before their system for smoothing the track bed profile is used. What they do is to reposition the plowshares with the use of position indicators 25. Thus, step (a) of claim 1 is not obvious from the cited patent. Step (b) is absent therefrom, as is step

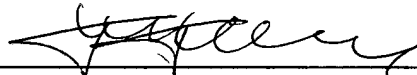
©), as explained hereinabove. Theurer et al do **not** calculate an amount of ballast required for quality **tamping** but adjust the plowshares so as to distribute the ballast in dependence on the scanned profile, **not** the measured track level deviation (there being none) or a **recorded** scanned track bed profile (none being recorded).

In view of the above, claim 1 is respectfully submitted clearly to be patentable, and claim 2 is believed to be patentable on its own merit. The allowability of claim 3 is gratefully noted.

A sincere effort having been made to overcome the grounds of rejection, favorable reconsideration and allowance of claims 1-3 are respectfully solicited.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MAIL STOP Amendment, COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450, on May 6, 2005.


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